

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Appeals for  
the Federal Circuit and the United  
States Court of International Trade

Vol. 25

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OCTOBER 23, 1991

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No. 43

*This issue contains:*

U.S. Customs Service

T.D. 91-86 and 91-87

General Notice

THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

## NOTICE

The decisions, rulings, notices, and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

# U.S. Customs Service

## *Treasury Decisions*

(T.D. 91-86)

### SYNOPSIS OF DRAWBACK DECISIONS

The following are synopses of drawback contracts approved July 5, 1991, to August 16, 1991, inclusive, pursuant to Subpart C, Part 191, Customs Regulations.

In the synopses below are listed for each drawback contract approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the proposal was signed, the basis for determining payment, the Regional Commissioner to whom the contract was forwarded or approved by, and the date on which it was approved.

Date: October 3, 1991.

File: DRA-1-09 223324

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

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(A) Company: Archer Daniels Midland Co.  
Articles: Undeodorized hydrogenated soybean oil  
Merchandise: Crude degummed soybean oil  
Factories: Macon, GA; Lincoln, NE  
Proposal signed: April 26, 1991  
Basis of Claim: Appearing in, per contract  
Contract forwarded to RC of Customs: New Orleans, July 30, 1991

(B) Company: Copolymer Rubber & Chemical Corp.  
Articles: Styrene/butadiene rubber; acrylonitrile/butadiene rubber  
Merchandise: Butadiene; styrene  
Factory: Baton Rouge, LA  
Proposal signed: July 27, 1990  
Basis of claim: Used in  
Contract forwarded to RCs of Customs: New York & New Orleans, July 15, 1991

(C) Company: Eastman Kodak Co., Tennessee Eastman Co. Div.  
Articles: Polyester dyes  
Merchandise: 1,8-dichloroanthraquinone  
Factory: Kingsport, TN  
Proposal signed: June 11, 1991  
Basis of claim: Used in  
Contract forwarded to RC of Customs: Boston, July 29, 1991  
Revokes: T.D. 83-257-G

(D) Company: Ethicon, Inc.  
Articles: VICRYL co-polymer  
Merchandise: Lactide; glycolide  
Factory: Cornelia, GA  
Proposal signed: April 22, 1991  
Basis of claim: Used in  
Contract forwarded to RC of Customs: New York, July 5, 1991

(E) Company: Fina Oil and Chemical Co.  
Articles: Styrene monomer; ethylbenzene; toluene  
Merchandise: Benzene; ethylene; ethylbenzene  
Factory: Carville, LA  
Proposal signed: March 27, 1991  
Basis of Claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation  
Contract forwarded to RC of Customs: New York, August 8, 1991

(F) Company: Hoffmann-La Roche Inc.  
Articles: Procarbazine hydrochloride  
Merchandise: Formylisopropylamide  
Factory: Nutley, NJ  
Proposal signed: February 27, 1991  
Basis of claim: Used in  
Contract forwarded to RC of Customs: New York, August 8, 1991

(G) Company: ICI Americas Inc.  
Articles: Tefluthrin 30 CS  
Merchandise: PP993 - Tefluthrin  
Factory: Richmond, CA  
Proposal signed: April 2, 1991  
Basis of Claim: Used in  
Contract forwarded to RC of Customs: Boston, August 8, 1991

(H) Company: Konica Manufacturing USA, Inc.  
Articles: Photographic paper  
Merchandise: Base paper  
Factory: Whitsett, NC  
Proposal signed: January 25, 1991  
Basis of claim: Appearing in  
Contract forwarded to RC of Customs: Long Beach (San Francisco Liquidation), August 8, 1991

(I) Company: Lancot-Arlen Fabrics Inc.

Articles: Printed textiles

Merchandise: Heat transfer paper

Factory: Concord, NC

Proposal signed: August 25, 1990

Basis of claim: Used in

Contract forwarded to RC of Customs: New York, July 16, 1991

(J) Company: Lou Ana Foods, Inc.

Articles: Refined soybean oil

Merchandise: Crude degummed soybean oil

Factory: Opelousas, LA

Proposal signed: October 11, 1990

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to RC of Customs: New Orleans, July 15, 1991

(K) Company: Lou Ana Foods, Inc.

Articles: Refined soybean oil

Merchandise: Crude soybean oil

Factory: Opelousas, LA

Statement signed: October 11, 1990

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to RC of Customs: New Orleans, July 15, 1991

(L) Company: Macfield, Inc.

Articles: Undyed and dyed texturized polyester yarn; undyed and dyed texturized nylon yarn; nylon covered yarn

Merchandise: Undyed polyester filament yarn; undyed texturized polyester yarn; undyed nylon filament yarn; undyed texturized nylon yarn

Factories: Madison, Reidsville, Mayodan, Archdale & Stoneville, NC

Proposal signed: June 21, 1991

Basis of claim: Appearing in

Contract approved by RC of Customs in accordance with § 191.25(b)(2): New York, July 22, 1991

Revokes: T.D. 79-78-P to cover a change in name from Macfield Texturing, Inc., and to update factory locations

(M) Company: Magruder Color Co., Inc., Radiant Color Div.

Articles: Dry color pigments

Merchandise: Dyes

Factory: Richmond, CA

Proposal signed: February 25, 1991

Basis of claim: Used in

Contract forwarded to RC of Customs: New York, July 15, 1991

(N) Company: Orange-co of Florida, Inc.

Articles: Pasteurized orange juice and special concentrated orange blend

Merchandise: Orange juice that is not concentrated, not reconstituted and unsweetened

Factory: Bartow, FL

Proposal signed: March 30, 1990

Basis of Claim: Used in

Contract forwarded to RC of Customs: Miami, August 16, 1991

(O) Company: PPG Industries, Inc.

Articles: 2-oxo-1,3-bis(phenylmethyl)-4,5-imidozolidine dicarboxylic acid [1,3-dibenzyl-4,5-cis-dicarboxylicimidazoid-2-one] a/k/a cyclo acid

Merchandise: 2,3-bis[(phenylmethyl)amino] butanedioic acid a/k/a dibenzylaminosuccinic acid or DBA

Factory: La Porte, TX

Proposal signed: May 23, 1991

Basis of claim: Used in

Contract forwarded to RC of Customs: New York, July 29, 1991

(P) Company: Pacific Western Extruded Plastics Co. (PWPipe)

Articles: PVC pipe

Merchandise: Polyvinyl chloride resin

Factories: Eugene, OR; Tacoma & Sunnyside, WA; Visalia, Union City, Cameron Park, Downey & Perris, CA

Proposal signed: November 11, 1990

Basis of claim: Used in

Contract forwarded to RC of Customs: Long Beach (San Francisco Liquidation), August 16, 1991

(Q) Company: The Pillsbury Co.

Articles: Food products in which wheat flour is an ingredient

Merchandise: Wheat

Factories: As listed in contract

Proposal signed: July 30, 1991

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to RC of Customs: Chicago, August 8, 1991

(R) Company: Revere Copper Products, Inc.

Articles: Copper and copper alloy strip, sheet, plate, extruded shapes, rod, bar

Merchandise: Unalloyed copper cake; billet; cathodes

Factories: Rome, NY; New Bedford, MA

Proposal signed: October 10, 1990

Basis of claim: Appearing in

Contract forwarded to RC of Customs: Chicago, July 29, 1991

(S) Company: Rexene Products Co.

Articles: Homopolymer and copolymer polypropylene resins

Merchandise: Propylene; titanium trichloride catalysts (Toyo "C", Toho TAC 141 and Toho "THC 32A")

Factories: Bayport & Odessa, TX

Proposal signed: October 12, 1990

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to RCs of Customs: Houston & New York, August 8, 1991

(T) Company: Rubbermaid Inc.

Articles: Plastic household products

Merchandise: Polyethylene resins

Factories: Wooster, OH; Greenville, TX; Goodyear, AZ

Proposal signed: April 30, 1991

Basis of claim: Appearing in

Contract forwarded to RC of Customs: Long Beach, July 12, 1991

(U) Company: Standard Commercial Tobacco Co., Inc.

Articles: Blended flue-cured leaf tobacco; blended burley leaf tobacco; blended flue-cured strip tobacco; blended burley strip tobacco; blended burley stems; blended flue-cured stems

Merchandise: Unstemmed burley leaf tobacco; unstemmed flue-cured leaf tobacco; burley leaf tobacco, in strip form, flue-cured tobacco, in strip form; burley scrap tobacco; flue-cured scrap tobacco

Factory: Wilson, NC

Proposal signed: July 25, 1991

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to RC of Customs: Miami, August 12, 1991

(V) Company: Sterling Chemicals, Inc.

Articles: Styrene; ethylbenzene; toluene

Merchandise: Benzene; ethylene; ethylbenzene

Factory: Texas City, TX

Proposal signed: March 27, 1991

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Contract forwarded to RC of Customs: Houston, July 9, 1991

Revokes: T.D. 89-81-Y

(W) Company: Sunpure Ltd.

Articles: Grapefruit juice from concentrate (reconstituted juice); frozen concentrate grapefruit juice; bulk concentrated grapefruit juice

Merchandise: Concentrated grapefruit juice for manufacturing

Factory: Avon Park, FL

Proposal signed: March 19, 1991

Basis of claim: Used in

Contract forwarded to RC of Customs: Miami, July 25, 1991

(X) Company: Syntex Agribusiness Inc.

Articles: 2-bromo-6-methoxynaphthalene (BMN)

Merchandise: Beta-naphthol (2-naphthol)

Factory: Springfield, MO

Proposal signed: April 5, 1991

Basis of claim: Used in

Contract forwarded to RC of Customs: Chicago & Long Beach (San Francisco Liquidation), July 29, 1991

Revokes: T.D. 84-1-T

(Y) Company: TST, Inc., Timco/Tandem

Articles: Aluminum alloy ingot and billet

Merchandise: Silicon

Factories: Long Beach & Fontana, CA

Proposal signed: April 23, 1991

Basis of claim: Appearing in

Contract forwarded to RC of Customs: Long Beach, July 31, 1991

(Z) Company: Union Carbide Chemicals and Plastics Co., Inc.

Articles: Isopropanol anhydrous

Merchandise: Isopropanol azeotrope (CBM)

Factories: Texas City, TX; Charleston, WV

Proposal signed: April 23, 1991

Basis of claim: Used in

Contract forwarded to RC of Customs: New York, July 29, 1991

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#### 19 CFR Part 4

(T.D. 91-87)

### STEVEDORING EQUIPMENT AND MATERIALS—COASTWISE TRANSPORTATION ON NON-COASTWISE-QUALIFIED VES- SELS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This document clarifies and retains the long-standing Customs Service interpretation of one element of the coastwise merchandise transportation statute. An earlier published notice proposed to limit a benefit conferred by the statute solely to vessels carrying stevedoring equipment for use on the transporting vessel itself. Cus-

toms has concluded a review of the comments received and has determined not to change its position, but instead to clarify that position with regard to certain limited vessel chartering arrangements as well as the definition of stevedoring equipment and materials. No substantive change in the administration of the statute results from either of these clarifications.

**EFFECTIVE DATE:** October 10, 1991.

**FOR FURTHER INFORMATION CONTACT:** Larry L. Burton, Carrier Rulings Branch, 202-566-5706.

**SUPPLEMENTARY INFORMATION:**

#### BACKGROUND

By publication in the Federal Register of May 23, 1990 (55 FR 21204), Customs proposed to change its position regarding the transportation of stevedoring equipment and material between coastwise points by non-qualified vessels. The cited notice solicited public comments on the proposed change which would have required that such equipment and material be used only to load and unload the transporting vessel.

Title 46, United States Code Appendix, section 883 (46 U.S.C. App. 883), commonly called the Jones Act, provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by citizens of the United States. Section 883 was amended by the Act of September 21, 1965 (Pub. L. 89-194, 79 Stat. 823), which added the sixth proviso, and by the Act of August 11, 1968 (Pub. L. 90-474, 82 Stat. 700), which amended that proviso.

The 1965 Act exempted from the provisions of section 883 the coastwise transportation of empty cargo vans, empty lift vans, and empty shipping tanks in non-coastwise-qualified United States-flag vessels or foreign-flag vessels, on a reciprocal basis, when the vans and tanks are owned or leased by the owner or operator of the transporting vessels and are being transported for use in the carriage of cargo in foreign trade. The 1968 Act added equipment for use with cargo vans, lift vans, and empty shipping tanks, empty barges specifically designed for carriage aboard a vessel, and certain empty instruments of international traffic to the articles included within the sixth proviso. These articles and the articles covered by the 1965 Act were required by the 1968 Act to be owned or leased by the owner or operator of the transporting vessel and transported for his use in handling his cargo in foreign trade.

The 1968 Act also added stevedoring equipment and material to the articles included within the sixth proviso. To qualify for exemption from section 883 under the sixth proviso, the stevedoring equipment and material must be owned or leased by the owner or operator of the transporting vessel or owned or leased by the stevedoring company contracting

for the lading or unlading of the vessel and the stevedoring equipment and material must be transported without charge for use in the handling of cargo in foreign trade.

In its interpretation of the sixth proviso insofar as it relates to stevedoring equipment and material, Customs has never taken the position that stevedoring equipment and material transported under the proviso is required to be used exclusively for loading or unloading the transporting vessel. In one ruling on this subject (File: VES-3-17-CO:R:P:C 109629/109464 PH, July 21, 1988) Customs held that a vessel of a foreign country which grants reciprocal treatment to vessels of the United States and which was bareboat chartered by the owner of certain cranes, could be used to transport the cranes between United States points when those cranes were to be used to load and unload cargo of the owner of the cranes into or from vessels other than the specific vessel which transported the cranes.

Customs received a request on behalf of an owner and operator of United States-flag coastwise-qualified vessels to reverse this position and to issue a new interpretation of the sixth proviso under which stevedoring equipment and material transported under the sixth proviso must be employed exclusively for the purpose of loading and unloading the transporting vessel. The party requesting that action contended that the Customs position is inconsistent with the intent of the Congress in its enactment of the 1968 Act adding stevedoring equipment and material to the sixth proviso and that the proposed interpretation was consistent with expressed Congressional intent. It was urged that there are indications in the legislative history that the stevedoring equipment and material provision added to the sixth proviso by the 1968 Act was intended to apply only to stevedoring equipment and material used to load and unload the vessel transporting the stevedoring equipment and material (114 Cong. Rec. 21480, 21481 (1968) (remarks of Representatives Mailliard, Green, and Dellenback); H. Rep. No. 1712, 90th Cong., 2nd Sess. (1968) (page 2, quoting the comments of the Department of Commerce); and Sen. Rep. No. 1485, 90th Cong., 2nd Sess. (1968) (reprinted at 1968 U.S.C.A.N. 3185) (July 19, 1968, letter from General Counsel of the Department of Commerce)). It has also been suggested that there is language in the sixth proviso itself indicating that this was the intent of the provision relating to stevedoring equipment and material (i.e., "stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of *that* vessel \* \* \*" (emphasis added)).

Customs suspended the issuance of rulings on the issue during the pendency of notice and comment procedures. The view put forward for comment was that the stevedoring equipment and material provision added to the sixth proviso by the 1968 Act was intended to apply only to stevedoring equipment and material used to load and unload the vessel

transporting the stevedoring equipment and material. Customs stated that it was considering the revocation of its July 21, 1988, ruling (*supra*) and similar rulings and the issuance of a new ruling holding that stevedoring equipment and material transported under the sixth proviso must be used exclusively for loading and unloading the transporting vessel.

#### ANALYSIS OF COMMENTS

Customs received sixteen (16) comments in response to its published solicitation of May 23, 1990. Fourteen (14) of the comments were filed in opposition to the proposed change, and two (2) were filed in support.

A general theme was reflected in those comments which opposed any change, that being that the contemplated change would be contrary to the legislative history and intent of the statute and would hinder the efficient use of stevedoring equipment.

The two comments received in support of a changed position also expressed like opinions. Generally, it was urged that the comments of Representatives Mailliard, Green, and Dellenback are dispositive of the issue of limitation of the benefits of the provision exclusively to the transporting vessel. The essence of the argument is that the subject portion of the sixth proviso is meant only to facilitate incidental transportation of stevedoring equipment and materials. Customs, of course, had adopted the view expressed in two of the comments which supported a change at the time we initially published for comment. Upon further consideration, we have decided to adhere to our original position; however, some clarification is needed as to the parameters of permitted transportation.

After carefully reviewing the comments received in response to our published proposal to change the interpretation of the sixth proviso, and taking into account the language of the law and the legislative history, we do not accept the view that the proviso is intended to limit the use of stevedoring equipment which is transported aboard a particular vessel from one U.S. port to another, to operations concerning that vessel and none other in its port of use. No acceptable argument is made as to why subparagraph (e) is to be considered differently than subparagraphs (a) through (d) in the same proviso, which are not vessel-specific. The law is clear that the vessel providing the transportation must, itself, be the object of use of the stevedoring equipment. It is, however, a strained reading of the statute to find that the use of such equipment is limited solely to that vessel. The language concerning the exclusive use on the same vessel logically applies only to the equipment transported for stevedoring companies. Same vessel use is merely a means of insuring that the equipment will be transported free of freight charges by the vessel operator, as required by the statute. The vessel operator is induced to transport the equipment at no charge in exchange for that equipment being used to load or unload that vessel. The placement of punctuation within the subparagraph supports this view. Since subparagraph (e) applies to non-vessel-operating entities (stevedoring companies) it is not

logical that the law would require that such companies carry vessel-specific equipment in their inventories. Further, such companies cannot be expected to allow their capital assets (equipment) to sit idle after having been used to lade or unlade a single vessel. Under the proposed change in interpretation, future use of that equipment would be prohibited until it was transported elsewhere for another one-time use. The general purpose behind enactment of the sixth proviso was to facilitate commerce, which purpose is best promoted by our existing interpretation.

#### STATEMENT OF POSITION

After a review of all comments submitted as well as all pertinent legal authority, Customs has determined not to adopt a change in the current interpretation regarding the transportation of stevedoring equipment and materials under subparagraph (e) of the sixth proviso to 49 U.S.C. App. 883. We do, however, wish to offer clarification regarding two points.

First, we wish to address the portion of the proviso which requires that stevedoring equipment and supplies be "transported without charge". The case which initially gave rise to this entire examination of our position involved the transportation of a large cargo crane aboard a non-coastwise-qualified vessel which had been chartered for the purpose of accomplishing that one movement. We allowed the transportation in that case because the vessel was registered in a country which grants reciprocity to United State-flag vessels. Overlooked in that case, however, was the statutory requirement that materials transported under the proviso be carried at no charge. Obviously when the underlying purpose of a vessel's charter is a single transportation, the charter fee is properly considered a charge incurred for the movement. In the future, such movements will not be permitted under the sixth proviso. This clarification will have no effect on the Customs position regarding bareboat charter arrangements generally. When a vessel company is operating a vessel under a bareboat charter and as part of an ongoing usage engages in a movement such as is here under consideration, so long as the other conditions of the statute are met the transportation will be permitted.

Second, there has been some confusion over the definition employed by Customs to identify exactly what is meant by stevedoring equipment and supplies. For the purposes of this statute, Customs considers such items to be limited to equipment which is necessary to unlade cargo from its place of stowage aboard a vessel to its first place of rest on the shore, or to lade cargo from its last place of rest on the shore to its place of stowage aboard a vessel. This definition eliminates from consideration any equipment used to manipulate cargo while it is ashore.

#### DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Carrier Rulings Branch, Office of Regulations and Rulings, U.S. Customs Serv-

ice. However, personnel from other officers participate in its development.

MICHAEL H. LANE,  
*Acting Commissioner of Customs.*

Approved: September 24, 1991.

JOHN P. SIMPSON,  
*Acting Assistant Secretary of the Treasury.*

[Published in the Federal Register, October 10, 1991 (56 FR 51168)]



# U.S. Customs Service

## *General Notice*

### SOLICITATION FOR COMMENTS ON THE TESTING OF PRESSED AND TOUGHENED (SPECIALLY TEMPERED) GLASSWARE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Request for comments on the testing of pressed and toughened (specially tempered) glassware.

SUMMARY: Customs is soliciting comments of interested parties on the testing of certain articles of glass to ascertain if they have been "pressed and toughened (specially tempered)." These articles are normally imported under Item numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS).

DATE: Comments must be received on or before November 25, 1991.

COMMENTS: Written comments (preferably in triplicate) may be addressed to and inspected at the Office of Laboratories and Scientific Services, Room 7113, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories and Scientific Services (202) 566-2446.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

At the present time the U.S. Customs Service employs a four part testing method to determine if certain glassware articles are "pressed and toughened (specially tempered)". These articles are normally imported under Subheading numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Articles of "safety glass, consisting of toughened (tempered) \* \* \* glass" normally imported under Heading 7007 of the HTSUS, e.g., architectural plate glass, vehicle windshields, are not within the purview of this notice. Therefore, Customs is not soliciting information concerning analysis methods for these articles.

Currently, Customs' test protocol includes a dimension test, a thermal shock test, a counter fall test and a center punch test. The dimen-

sion test is used to identify glass articles which could not have been pressed. The counter fall and thermal shock tests are used to determine the article's durability (toughened). The purpose of the center punch test is to break the article in order that the broken pieces may be examined for evidence of dicing or crazing (tempered).

*Dimension Analysis Test:*

Using a caliper or similar device, measure the minimum diameter of the mouth, opening, or upper rim of the sample. With the same device, measure the maximum inside diameter.

*Thermal Shock Test:*

Heat sufficient water to boiling in a suitable vessel. Place the empty, dry glassware sample, at room temperature, on a level surface nearby. Rapidly pour boiling water into the sample. Fill to approximately 1/2" of the upper rim. If breakage does not occur, allow to stand for five minutes, empty, examine for cracks or other damage.

*Counter Fall Test:*

Place the test sample on a level surface 36" to 37" above a vinyl tile floor (or the equivalent). With a gentle sweeping motion, trip the glass off the surface for free fall onto the floor.

*Center Punch Test:*

Set the sample to be tested on a solid, level surface. Place the pointed end of a center punch, vertically, against the inside center bottom or heel. Strike the dull end of the punch with a hammer, using blows of gradually increasing severity, until breakage occurs. The sample should not be forced to break more than once. However, as breakage may continue in storage, it is recommended that a photographic record be made of the breakage pattern and/or typical fragments.

The purpose of this notice is to request interested parties to comment on a proposed change to this protocol and/or submit suggested alternate methods for "pressed and toughened (specially tempered)" glassware that are currently in use in the industry.

Customs plans to change its testing protocol by deleting the counter fall test and altering the thermal shock test. The dimension test and the center punch test will not be changed and will continue to be performed. The counter fall test has proven to be unproductive in most cases, and for this reason it is being deleted. Regarding the thermal shock test, it has been brought to Customs' attention that manufacturers of these glassware articles use more severe parameters for the thermal shock test to analyze these items for quality control purposes. Since Customs has no knowledge of the manufacturing process used to impart the required "toughness" to the imported item, it will be necessary to maintain the center punch test for the purpose of assuring that any toughness or durability imparted to an article is the result of "special tempering" and not some other physical characteristic, e.g., thickness of the glass.

If a sample of glassware submitted to the thermal shock test breaks as a result of the test, Customs will find that the article is not "toughened (specially tempered)" for tariff purposes. In interpreting the center punch test, Customs plans to use the criteria that some dicing or crazing is sufficient to determine that a glass article has been "specially tempered" for tariff purposes. For the purposes of this test, "some" will be considered to be any diced or crazed fragments yielded by the broken sample that is more than just a fugitive diced fragment. A sample must pass both tests in order to be considered "toughened (specially tempered)" for Customs purposes.

Customs proposes that the new parameters for the thermal shock test to be as follows:

*Thermal Shock Test:*

Heat the sample(s) in an oven to 160° C for 30 minutes. Remove 1 sample from the oven and immediately immerse it in a water bath set at 25° C. This effects a 135° C difference in temperature. (Alternate oven and water bath settings are acceptable as long as the 135 degrees C difference in temperature is maintained.)"

Prior to making any final changes in the current U.S. Customs testing procedure, consideration will be given to any written comments, timely submitted, to Customs. This consideration may include a rigorous assessment of any suggested techniques or methods through an inter-laboratory testing program.

Comments submitted and the current method used by the U.S. Customs Service will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), Section 1.4, Treasury Department Regulations (31 CFR 1.4) and Section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 A.M. and 4:30 P.M. at the Office of Laboratories & Scientific Services, room 7113, U.S. Customs Service Headquarters, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

Dated: October 3, 1991.

JOHN B. O'LOUGHLIN,  
*Director,*  
*Office of Laboratories and Scientific Services.*

[Published in the Federal Register, October 9, 1991 (56 FR 50973)]

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